

DEPARTMENT OF SOCIAL SERVICES

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June 3, 1982

ALL COUNTY INFORMATION NOTICE No. 1-62-82

TO: ALL COUNTY WELFARE DEPARTMENTS
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL DEPARTMENT OF SOCIAL SERVICES ADOPTION DISTRICT OFFICES

SUBJECT: Laws Relating to Adoptions - 1981

The purpose of this information notice is to summarize the provisions of 1981 laws that have an impact on the adoption program.

If you have any questions regarding these summaries, please contact your adoptions program consultant.


CLAUDE FINN

Deputy Director
Adult and Family Services Division

cc: CWDA

Attachment

Chapter 810, Statutes of 1981 (Thurman, AB 344)

This statute makes specific changes in the procedure for having a minor freed from parental custody and control.

Section 233 of the Civil Code has been amended to require that the report of the investigation of a petition to free a child from custody and control contain statements pertaining to the explanation of the action to the minor; a statement of the minor's feelings and thoughts concerning the pending action; statements regarding the minor's attitude toward his or her parents and his or her desire to live with them; a statement that the minor has been informed of his or her right to attend the hearing and his or her feelings about attending the hearing. Section 233 has also been amended to require that if because of age, physical or emotional condition the minor cannot respond meaningfully to these explanations and inquiries, a statement of the minor's condition shall satisfy the requirements.

Section 234 has been amended to provide that a citation must be issued to any person having custody of a minor at least 10 days prior to a freedom from custody hearing, requiring them to appear with the minor if the minor is 10 or over. If the minor is under 10, his or her appearance is up to the court.

An exception from appearance is made for minors over 10 who are confined because of illness or other incapacity to institutions and residences and therefore are unable to attend a hearing.

Unless waived by the minor's counsel, the law requires that the minor be heard in court chambers regarding his or her thoughts and feelings about the court proceedings, about his or her parents, and about his or her preference regarding custody according to Civil Code Section 4600.

Section 237.5 provides that the court may appoint counsel for the minor, regardless of the minor's ability to afford it, if it is determined to be in the minor's best interest. Unless the court orders it, or the minor requests it, the minor shall not be present in court.

The statute provides that, unless knowingly and intelligently waived, the court shall appoint counsel for the parent if the parent is unable to afford it, and the counsel appointed must be different than that appointed for the child.

The court may appoint the public defender as counsel or may appoint private counsel. The manner of reimbursing private counsel is specified in the law.

If necessary, the court may continue proceedings for not to exceed 30 days to arrange counsel and to enable counsel to become acquainted with the case.

Section 239 now provides that if the court declares a minor free from custody and control of both parents, or one parent if the other no longer has custody and control, the court shall also take one of the following actions:

- a. Appoint a guardian of the minor.
- b. At the request of the Department or a licensed adoption agency or when the court finds it in the minor's best interest, refer the minor to the Department or a licensed adoption agency for adoptive placement.

Section 239 further provides that after referral of a minor to an agency, no petition for guardianship of the minor may be filed without consent of the agency, and no adoption petition may be heard until the appellate rights of the natural parents have been exhausted. It specifies that the agency shall have responsibility for, and be entitled to custody and control of the minor at all times until an adoption petition has been granted.

Chapter 619, Statutes of 1981 (Moore, AB 634)

Only part (a) of Section 11401 of this legislation pertains to the adoption program.

It specifies that AFDC-FC shall be provided for a child who has been relinquished for adoption to a licensed adoption agency or the Department, and also for the child who has been declared free from custody and control of either or both parents after an action under the Civil Code has been brought by a licensed adoption agency or the Department. AFDC-FC is granted with the provision that the licensed adoption agency or Department, if responsible for placement and care, provide to such children all services as required by the Department to children in foster care.

Before enactment of the above legislation, AFDC-FC could only be granted if the child was receiving AFDC-FC at the time of the relinquishment or other termination action, or an action to terminate the rights of the second parent was pending, or if subsequent to the relinquishment or other termination action, the child was determined to be unplaceable for adoption.

Chapter 734, Statutes of 1981 (Alquist, SB 301)

This statute makes amendments to Civil Code Section 227p relating to adult adoptions which impose additional requirements.

It adds 6 new subsections to 227p as follows:

- (1) The new law requires that the petition for adoption contain the following information:
 - The length and nature of the relationship between the prospective adoptee and petitioner
 - The degree of kinship, if any, between the petitioner and prospective adoptee
 - The reason for the adoption and whether it would be in the best interest of both parties as well as the public
 - The names and addresses of any living parents or adult children of the prospective adoptee
 - Whether the petitioner or petitioner's spouse has previously adopted any adult, and if so, the names of such persons and the date and place of adoption.
- (2) This section provides that no person shall adopt more than one unrelated adult person within one year of his or her adoption of an unrelated adult unless the person to be adopted is the sibling by birth of a person previously adopted under this law or unless the person to be adopted is disabled or physically handicapped. The section further provides that no person shall adopt an unrelated person within one year of any adoption of an unrelated adult by his or her spouse unless the person to be adopted is the sibling by birth of a person previously adopted under this law.

- (3) The court is given discretion as to whether the hearing with regard to the adoption of an adult person or a termination of a parent and child relationship under Civil Code Section 227p shall be open and public.
- (4) The statute permits the court to consider evidence, oral or written, whether or not it is in conformity with the Evidence code in determining if a petition is in the best interest of the public or best interest of the persons seeking the adoption.
- (5) This section of the bill specifies the procedure for terminating an adult adoption.
- (6) The law specifies that if an adoptive parent does not consent to termination of adoption, a verified written response shall be filed within 30 days of the date of mailing of the notice and the matter shall be set for hearing. The court may require an investigation by the county probation officer or the State Department of Social Services.

Chapter 555, Statutes of 1981 (Doolittle, SB 750)

This statute adds Section 270.1 to the Health and Safety Code requiring the State Department of Health Services, which administers California Children's Services, and all placing adoption agencies to notify all prospective adopting parents in writing that funds received under the California Children's Services program shall cease if the adopting parents move out of the state. The law also requires that they be advised that they may be eligible for funds in the new state if they meet qualifications.

Chapter 1174, Statutes of 1981 (Thurman, AB 1023)

This statute makes amendments and additions to the Government Code allowing the destruction of certain records after certain specified periods of time have elapsed, the purpose being to save storage costs for local governments. The bill would permit the destruction of a significant portion of court adoption records.

Section 69503 (a) of the Government Code requires a period of 5 years to elapse since papers in an adoption proceeding have been filed before records may be destroyed, and provides that the action may not be pending or on appeal.

Section 69503 (c) requires the court clerk to maintain for public use a microphotographic film print or copy of each document destroyed in accordance with Evidence Code Sections 1531 and 1551.

Section 69503 (e) specifies that the county clerk may microfilm only certain documents as listed in the statute prior to destruction, and that documents not listed may be destroyed within specified time periods. The only adoption documents listed are the petition and order of adoption. Under this provision only the petition and order of adoption would be microfilmed and maintained, while the remainder of the adoption record could be destroyed.

NOTE: Your attention is called to Chapter 125, Statutes of 1982 (AB 2272, Waters) which was chaptered with an urgency clause on March 19, 1982. The legislation amends Section 3, Government Code 69503 (e) to require the microfilming of court adoption

records prior to their destruction, and eliminates the provision of Chapter 1174, Statutes of 1981, that only the petition and order of adoption could be microfilmed prior to their destruction.

Chapter 266, Statutes of 1981 (Stirling, AB 123)

This statute amended Section 895 of the Evidence Code relating to the establishment of paternity.

The law allows the introduction of blood tests to prove paternity. When experts disagree in their findings or conclusions, or if the tests show the probability of the alleged father's paternity, the blood test evidence may be considered by the finder of fact (judge or jury) in determining paternity. The tests referred to, held admissible under case law, are human leucocyte antigen tests (HLA), commonly understood as tissue typing of white blood cells.